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Convention on the Rights of the Child

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Committee on the Rights of the Child
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Summary record of the 1866th meeting
Held at the Palais Wilson, Geneva, on Monday, 27 January 2014, at 10 a.m.

Chairperson: Ms. Sandberg

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties (*continued*)

Third and fourth periodic reports of Germany (CRC/C/DEU/3-4; CRC/C/DEU/Q/3-4 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*

2. **Mr. Kleindiek** (Germany) said that children and young people were central to government policies and that the ratification by Germany, in February 2013, of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure bore witness to the authorities' desire to ensure greater respect for the rights of the child in practice.

3. The German Government had taken a number of measures to combat the different types of violence to which children were exposed within the family, at school or in child protection establishments. It had, for example, organized a round table on sexual abuse of minors by persons who had authority over them in public or private establishments, and had created the post of independent commissioner for sexual abuse. The new Child Protection Act, which had come into force on 1 January 2012, was another bulwark to protect children from desertion or abuse. In particular, it had put in place a comprehensive and efficient protection system based on prevention and intervention and had strengthened the roles of parents, doctors, and staff of youth services and family courts. It also provided for the possibility for children in crisis situations to receive individual counselling.

4. Acting on the recommendations made by the Committee following consideration of the previous periodic report, the Government had adopted an Act to further develop social services for children and young people, which provided for unaccompanied foreign children to be placed in public child protection establishments.

5. Germany already had mechanisms responsible for coordinating child policies under the federal Government and the *Länder*, and therefore did not consider it necessary to create a new one. Furthermore, an institution to hear complaints from individuals would have only limited authority, given the different levels of power that defined the German system, and would only be able to play a coordinating role. Furthermore, effective complaints mechanisms which were easily accessible to children were already in place in many regions.

6. The question of specifically incorporating the rights of the child into the German Basic Law (*Grundgesetz*) had sparked a lively debate between politicians, experts and representatives of civil society. It had been concluded that the rights enshrined in the Basic Law already applied to children, and that therefore no amendment was needed.

7. **Mr. Cardona Llorens** (Coordinator, Country Task Force) asked whether the State party envisaged according the Convention a higher status within the domestic legal order, given that, at present, any federal law adopted subsequent to the Convention or any superior instrument which conflicted with the principles it enshrined would prevail. The issue was especially important since the rights of the child were not included in the Basic Law and some *Länder*, such as Hamburg and Hesse, had still not written them into their Constitution. He wished to know whether, notwithstanding the current economic crisis, the State party considered it was in a position to allocate 0.7 per cent of its GDP to official development assistance in 2015, and what proportion of the budget was set aside for realizing child rights though activities planned under international cooperation.

8. He asked the delegation to indicate whether the State party envisaged taking measures to reduce the level of harmful emissions from coal-fired power stations and other

polluting industrial plants which were responsible each year for numerous premature deaths, serious health problems and fœtal malformations. He also requested information on measures taken to improve air quality and, consequently, guarantee children the right to life, survival and development, and an optimum state of health.

9. Further information would be appreciated on the follow-up to the complaints about German companies established abroad engaging in activities which allegedly infringed children's rights. He recalled especially the *Mubende v. Neumann Kaffe Gruppen* case and the complaints of human rights violations directed at the German forestry group Danzer in the Democratic Republic of the Congo. He asked whether the State party intended to ensure that the activities of German companies or their subsidiaries abroad respected the rights of the child.

10. **Mr. Madi** (Country Task Force) enquired about the concrete results of the National Action Plan for a Child-Friendly Germany 2005–2010 and the role of civil society in its implementation. He asked why the State party had still not set up a permanent mechanism responsible for coordinating the application of the Convention at federal and *Land* level, and whether it intended to put in place a global data-collection system on children with disabilities. He would like to know whether the State party planned to include the rights of the child in the school curriculum, since several studies had revealed that, within the 6 to 15-year-old age group, only one in six children had heard of the Convention. Lastly, he asked whether civil society and children had been involved in the preparation of the report under consideration.

11. **Ms. Khazova** (Country Task Force) asked what measures the State party had implemented to combat child poverty, which particularly affected children from single-parent families and large families, and children belonging to ethnic minorities.

12. Noting that the State party report and the written replies to the list of issues showed that the concept of *Kindeswohl* (the child's welfare) was interpreted in German legislation as equivalent to the concept of the best interests of the child, she emphasized that the two were not the same. She asked whether the State party envisaged incorporating, if not in the Constitution then at least in federal law, the principle of the best interests of the child as set out in the Convention.

13. She would also like to know whether legal proceedings for the recognition of paternity which were initiated when a child was born delayed the issuance of the birth certificate and, if so, whether the newborn had access to social and health services while the proceedings were under way.

14. Noting that gestational surrogacy was prohibited in the State party, she asked what happened to a child born in Germany to a surrogate mother, and whether he or she could be registered in the civil registry.

15. She also asked whether the State party had taken measures to guarantee children abandoned at birth the right to know their origins.

16. **Mr. Nogueira Neto** (Country Task Force), noting media reports that many acts of violence were committed against persons belonging to vulnerable groups, such as immigrants, persons of African descent, Roma or persons from the lesbian, gay, bisexual and transgender persons community, asked for further information on the application in practice of laws and policies to combat xenophobia and promote tolerance.

17. He also enquired how the rights of intersex children were guaranteed in the State party and particularly whether their opinion and best interests were taken into consideration prior to any irreversible medical intervention.

18. He further asked how confidentiality was ensured of information concerning children who were separated from their parents or unaccompanied, particularly in the context of the social and health services.

19. He also wished to know how the federal State and the *Länder* protected children from the dangers of the Internet and whether they were assessing the need to amend the Protection of Young Persons Act and the Interstate Agreement on the Protection of Minors in the Media.

20. He also asked what the tangible results had been of the round table "Youth protection programme", organized in 2009.

21. Lastly, he would like to know whether the Act of 2 November 2000 to outlaw violence in education was effectively enforced and whether the courts in the State party convicted persons who contravened it.

The meeting was suspended at 11.15 a.m. and resumed at 11.40 a.m.

22. **Mr. Kleindiek** (Germany) said that Germany was still aiming to allot 0.7 per cent of its GDP to development assistance and that it would continue to support international cooperation projects for children, particularly through UNICEF.

23. In recent years, the question of child labour had received increasing attention from the authorities. In the Hamburg *Land*, in particular, in order to obtain public contracts, companies needed to certify that their products were not manufactured by children.

24. **Mr. Cardona Llorens** asked whether other *Länder* had provisions similar to those adopted by the Hamburg *Land* concerning child labour. He would also like information on the application in practice of the United Nations Guiding Principles on Business and Human Rights.

25. **Mr. Kleindiek** (Germany) said he would provide the Committee at a later date with written information on the legislation in the different *Länder* concerning the restrictions applying to products made by children. The texts providing for the application of the United Nations Guiding Principles on Business and Human Rights at the national level were currently being drawn up.

26. The new Government had undertaken to put in place a separate policy for young persons. Civil society organizations and young people themselves would be involved in its formulation.

27. The Government had not hitherto considered it necessary to establish a central mechanism responsible for coordinating the implementation of the Convention. It was nevertheless willing to examine that issue.

28. **The Chairperson** said that the Committee attached great importance to the establishment, in the States parties to the Convention, of a central oversight mechanism for the implementation of the Convention throughout the country.

29. **Mr. Kleindiek** (Germany) noted that there were three levels of governance in Germany, i.e. federal, *Land* and commune level. The federal Government was nevertheless aware that the fact that certain areas fell under the competence of the local authorities did not relieve it of its obligation to implement the Convention throughout Germany.

30. **Mr. Madi** said that German statistics on children with disabilities were incomplete, notably because certain people, particularly refugees and migrants, were reluctant to declare the disability of their child.

31. **Mr. Kleindiek** (Germany) said that the federal authorities had no information about parents failing to declare their child's disability. He would ask the different *Länder* authorities about the subject.

32. **Ms. Soefker** (Germany) said that there were complaints mechanisms accessible to children at *Land* level. At federal level, such a mechanism would only have a coordinating role. In addition, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure provided for the possibility for children to lodge complaints with the Committee.

33. **The Chairperson** said the Committee's intention was that the States parties should set up internal mechanisms so that children would not need to resort to the international communications mechanism.

34. **Mr. Madi** emphasized that before a complaint could come before the Committee, all of the State's domestic remedies should be exhausted.

35. **Mr. Cardona Llorens** asked whether the local and regional complaints mechanisms complied with the principles relating to the status of national institutions for the promotion and protection of human rights.

36. **The Chairperson** asked whether it was possible to establish complaints mechanisms in the *Länder* where there were none.

37. **Ms. Soefker** (Germany) said that the features of those mechanisms varied greatly from one *Land* to another.

38. **The Chairperson** asked whether children could engage in legal action by themselves.

39. **Mr. Dittmann** (Germany) said that children could go directly to their local police station, where they were attended to by officers who were trained to deal with children's needs.

40. **Mr. Kleindiek** (Germany) said that activities to raise awareness of human rights in general, and child rights in particular, were organized at school. Civil society and children had been involved in the preparation of the periodic report.

41. In order to reduce child poverty, the authorities worked to combat poverty in families, especially by setting a minimum wage and imposing the principle of equal pay between men and women for work of equal value. Furthermore, the federal authorities provided financial support for programmes to help disadvantaged children at commune level.

42. **Mr. Kotrane** asked whether, as a follow-up to the concluding observations made by the Committee on Economic, Social and Cultural Rights in May 2011 (E/C.12/DEU/CO/5), the authorities had decided to increase family allowances.

43. **Mr. Cardona Llorens** enquired what measures the authorities took to guarantee access for all children with disabilities to inclusive education, at all levels of schooling, and to prevent and combat violence against children with disabilities.

44. He asked whether the significant number of children over 14 who were in conflict with the law was due to the lack of support measures, for example educational measures or psychological support.

45. He enquired whether German law admitted preconstituted evidence, which enabled child victims not to repeat their testimony throughout the proceedings.

46. Lastly, he asked if it was planned to raise the age of voluntary enlistment, which was currently set at 17 years, to 18 years, and whether the State party had taken measures to ensure that arms exported by Germany were not used by children.

47. **Ms. Khazova** asked whether the authorities envisaged replacing, in legislation, the notion of "custody" by that of "parental responsibility". She wished to know whether the State party envisaged adopting measures to enable social services to overcome the language barrier and to communicate with migrant families.

48. **Ms. Wijemanne** (Country Task Force) asked whether the marketing of breastmilk substitutes was controlled and whether working times were arranged so that mothers could breastfeed their children. She would like details on the access of persons belonging to ethnic minorities, unemployed persons and migrants in an irregular situation to health services and to know why 20 per cent of children needing hospital treatment were not hospitalized in paediatric departments but in other care units.

49. She would like further information on the numerous children diagnosed with attention disorders or hyperactivity and on the reasons for placing them in psychiatric hospital. She was particularly concerned about the addiction problems that drugs like Ritalin could create and asked whether it would not be preferable to set up social and psychological support structures.

50. She asked whether a health programme for adolescents had been put in place and whether adolescents had completely confidential access to reproductive health services. Lastly, she enquired about the measures taken to combat female genital mutilation.

51. **Mr. Nogueira Neto** said he would like to know what action the State party was taking to combat bullying in schools.

52. **Mr. Madi** asked whether child asylum seekers aged between 16 and 18 years could be considered children, and not adults, in asylum application procedures. He enquired whether the processing of asylum applications, the way asylum seekers were dealt with and the procedure for entry into Germany varied according to the *Länder*. He would like to know whether border officials were trained in deporting unaccompanied minors and if it were possible, where necessary, to accelerate the processing of a minor's asylum application in order to give a decision before his or her eighteenth birthday.

53. He asked whether the State party was willing to reconsider the provisions requiring the education authorities to inform the migration authorities of the status of foreign pupils, thereby depriving many children of schooling.

54. He would like to know what measures the State party envisaged taking to establish nationwide services for victims of sexual exploitation. He applauded the ratification by the State party of the Council of Europe Convention on Action against Trafficking in Human Beings and asked whether the best interests of the child were always taken into account in all procedures concerning cases of child trafficking.

The meeting rose at 1.05 p.m.